

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF TEXAS  
CORPUS CHRISTI DIVISION

MARC VEASEY, ET AL.,	)	CASE NO: 2:13-CV-00193
	)	
Plaintiffs,	)	CIVIL
	)	
vs.	)	Corpus Christi, Texas
	)	
RICK PERRY, ET AL.,	)	Friday, August 29, 2014
	)	
<u>Defendants.</u>	)	(8:31 a.m. to 8:47 a.m.)

MOTION HEARING

BEFORE THE HONORABLE NELVA GONZALES RAMOS,  
UNITED STATES DISTRICT JUDGE

Appearances:	See Next Page
Court Recorder:	Genay Rogan
Clerk:	Brandy Cortez
Court Security Officer:	Adrian Perez
Transcriber:	Exceptional Reporting Services, Inc. P.O. Box 18668 Corpus Christi, TX 78480-8668 361 949-2988

Proceedings recorded by electronic sound recording;  
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APPEARANCES FOR:

Plaintiffs:	CHAD W. DUNN, ESQ. Brazil and Dunn 4201 Cypress Creek Parkway, Suite 530 Houston, TX 77068  J. GERALD HEBERT, ESQ. Attorney at Law 191 Somerville Street #405 Alexandria, VA 22304  EMMA SIMSON, ESQ.
Mexican American Legislative Caucus, et al.:	EZRA D. ROSENBERG, ESQ. Dechert, LLP 902 Carnegie Center, Suite 500 Princeton, NJ 08540-6531
Texas League of Young Voters Education Fund:	KELLY DUNBAR, ESQ. DANIELLE CONLEY, ESQ. Wilmer Cutler Pickering, et al. 1875 Pennsylvania Avenue, NW Washington, DC 20006
State of Texas:	BEN DONNELL, ESQ. RODNEY KEISTER, ESQ. LINDSEY WOLF, ESQ. ARTHUR D'ANDREA, ESQ.
United States of America:	DANIEL J. FREEMAN, ESQ. ANNA BALDWIN, ESQ. U. S. Department of Justice 950 Pennsylvania Avenue, N.W. NWB Room 7125 Washington, DC 20530
Oscar Ortiz, et al.:	ROBERT DOGGETT, ESQ. Texas Rio Grande Legal Aid 4920 North IH 35 Austin, TX 78751

1        Corpus Christi, Texas; Friday, August 29, 2014; 8:31 a.m.

2                                (Call to Order)

3                **THE COURT:** Court calls Cause Number 2:13-193,  
4        *Veasey, et al. versus Perry, et al.*

5                                Who's here for the plaintiffs?

6                **THE CLERK:** Your Honor, on the line for the  
7        plaintiffs is Chad Dunn and Emma Simson. For the United  
8        States, Anna Baldwin and Daniel Freeman. For NAACP, Ezra  
9        Rosenberg. Ortiz, et al., Robert Doggett. Texas League of  
10       Young Voters, Kelly Dunbar and Danielle Conley. For the State  
11       of Texas, in the courtroom, Lindsey Wolf, Ronnie Keister, Ben  
12       Donnell, and Arthur D'Andrea.

13                **THE COURT:** All right. I forgot there was another  
14       matter, so when I got the e-mail last night that you all had  
15       resolved the issue on the motion to unseal, I thought we were  
16       not having a hearing this morning, and I got here early to work  
17       on the matters that are set on the Court's docket this morning.  
18       So, what we have, then, before the Court still, the motion --  
19       United States' motion to determine the sufficiency of  
20       defendants' responses to requests for admissions. So, what --  
21       what is the issue there?

22                                Ms. Baldwin?

23                **MS. BALDWIN:** Thank you, your Honor. Following the  
24       Court's order, we have conferred with the defendants in an  
25       attempt to resolve this in the most expeditious manner that we

1 could think of. The bulk of the requests for admissions, as  
2 the Court is aware, deal with racially polarized voting; and,  
3 specifically, with the existence of racially polarized voting  
4 as has been documented in analyses conducted by the Offices of  
5 the Texas Attorney General.

6           The ultimate fact that the United States is seeking  
7 to (indiscernible) and was using the State of Texas's own  
8 analyses as building blocks, facts, was the fact that racially  
9 polarized voting exists in the State of Texas. To move the  
10 dispute forward, we're aware that just three days ago, in the  
11 closing arguments in *Perez v Perry*, the State conceded the  
12 existence of racially polarized voting in all counties but two  
13 in the state. And I'd just like to read the portion of that  
14 transcript, because what we had proposed to defendants was just  
15 that if we could all agree that the State wouldn't make an  
16 objection to that portion of the closing argument, which is a  
17 party admission and it doesn't need to even be agreed to, but  
18 if the State, nonetheless, just to streamline matters, could,  
19 we would not have a further dispute about the racially  
20 polarized voting RFA's, or any of our RFA's, frankly, given the  
21 Court's order already authenticated the documents. But the  
22 State wasn't able to agree to that, notwithstanding -- this is  
23 the statement that was made in court to the three-judge panel  
24 in *Perez* just three days ago, your Honor.

25           **THE COURT:** Well, did the evidence support that in

1 that case, or was that just argument?

2 **MS. BALDWIN:** It -- it -- the -- what the evidence  
3 did support, and this is what the State literally said; this is  
4 from the closing (indiscernible).

5 **THE COURT:** But I'm -- we're talking evidence here.  
6 So, what did the evidence support in that case?

7 **MS. BALDWIN:** The evidence in that case, the position  
8 of the State was that it was uncontested, that expert analysis  
9 has shown that there's racially polarized voting, and quote, "I  
10 don't think there is any dispute about that."

11 **THE COURT:** Okay.

12 **MS. BALDWIN:** And, so, we wanted, with an agreement  
13 that, you know, the statement from the State, that quote:

14 "The State's position on whether racially polarized  
15 voting exists in the state, as a factual matter,  
16 defining 'racially polarized voting' as different  
17 groups of voters preferring different candidates, as  
18 a factual matter, it has been established that in  
19 almost every area of the state, except Nueces and  
20 Kleberg" -- which I will address in a second --  
21 "which, as a matter of fact, in general elections,  
22 Anglo voters tend to prefer different candidates than  
23 African American and Latino voters. That's what the  
24 expert analysis has shown. I don't think there is  
25 any dispute about that."

1           And, so, with that party admission, we were content  
2 if the State --

3           **THE COURT:** Okay. Let -- and I may be missing  
4 something. Argument is not an admission, correct? That is not  
5 evidence before a court. That's why I keep trying to focus on  
6 the evidence; if there was no objection to the evidence, if it  
7 was agreed to during the trial. But I'm a little concerned  
8 when you're talking argument.

9           **MS. BALDWIN:** Your Honor, we view that as a party  
10 admission. And, so, if the State could --

11           **THE COURT:** So, what the lawyers say is going to go  
12 to a party admission, then, even though we always say what the  
13 lawyers say is not evidence?

14           **MS. BALDWIN:** Well, that is the agreement that we  
15 were trying to reach with the State, that if they would agree  
16 that that was a party admission and it would come in in that  
17 manner, then we would not have a dispute about the rest of the  
18 polarized voting RFA's. The response from the State was:  
19 Well, we'll agree to that if you let all of the expert  
20 testimony from the State's expert about racially polarized  
21 voting at trial and in deposition come in. That didn't seem to  
22 us to be a streamlined approach. And, so, we're left -- given  
23 that the State seemed to want to walk away from that admission  
24 (indiscernible) --

25           **THE COURT:** Well, aren't they going to present that

1 anyway? Isn't that expert testimony going to be presented in  
2 this trial, or no?

3 **MS. WOLF:** Your Honor --

4 **MS. BALDWIN:** Your Honor, it's separate expert  
5 testimony from an expert who is solely the State's expert on  
6 racially polarized voting. In the *Perez* case, where the United  
7 States had its own separate expert on racially polarized  
8 voting, and since, no, your Honor, that's, you know, reams and  
9 reams of testimony from an entirely separate expert that we  
10 weren't seeking to admit, we were just seeking to get the  
11 streamlined facts of racially polarized voting.

12 So, without that agreement, where we're left is that  
13 all of the RFA's, except for the ones regarding census  
14 information that's already been authenticated and certain facts  
15 regarding candidacy that were not pressing in terms of our case  
16 in chief, remain disputed. So, that would be RFA's one through  
17 743 and 746 and 747.

18 **THE COURT:** All right. Ms. Wolf?

19 **MS. WOLF:** Your Honor, I'd just like to clarify a  
20 point for the record. I think the issue that the State had  
21 with this United States proposal to utilize the closing  
22 argument is that the closing argument is a statement which is  
23 completely taken out of context in various forms of evidence  
24 which were presented in a separate redistricting case. We've  
25 gone to lengths to confer with the attorneys who worked on the

1 redistricting case, because I was not one of those attorneys,  
2 so I don't have a complete grasp on the facts -- factual record  
3 in that case, but my understanding was that the racially  
4 polarized -- racially polarized voting as a Senate Factor is a  
5 legal conclusion. And, on top of that, it was a subject -- and  
6 I think Ms. Baldwin admitted -- it was a subject of various  
7 expert testimony in that case. So, to ask the defendants in  
8 this case or the Office of the Attorney General in this case to  
9 make an admission as to a matter of law and as to a matter  
10 which was the subject of multiple experts' testimony in another  
11 case, we don't think that's appropriate in terms of an RFA.

12 **THE COURT:** Okay. So -- so, what are we doing with  
13 these hundreds of requests for admissions, then?

14 **MS. WOLF:** So, our -- you know, either we would be  
15 willing to accept the United States' offer to -- to let that  
16 closing in, for whatever it's worth, on the assumption that the  
17 deposition transcript of our expert could come in -- and they  
18 could counter-designate it, we're totally fine with that; or,  
19 frankly, we -- we understand your Honor's order to authenticate  
20 the five documents which were the bulk of -- subject of the  
21 bulk of these RFA's, and we think that the documents, frankly,  
22 speak for themselves, and there is some data that's contained  
23 on the face of those documents, and I would -- I mean, I  
24 think -- so, the majority of these RFA's are asking the  
25 defendants to comb through approximately 6,000 pages of



1 documents and agree or disagree with the United States that the  
2 document says what it says when, at the end of the day, the  
3 document says what it says. And, so, that's how we would  
4 propose to address -- I believe it's approximately one through  
5 717 all refer to those particular exhibits, with the exception  
6 of 44, which is referring to a statement and a pleading.

7           As to -- there's a separate group, which is 718 to  
8 743, and that group of RFA's is asking the defendants to admit  
9 or deny, for example, as to the level of participation of  
10 African American, Hispanic, Spanish surnamed and Anglo voters  
11 in the Democratic Party and Republican Party primary elections  
12 in various years, as well as the political parties of the  
13 candidates members of those groups have voted in, in general  
14 elections, statewide primary elections. And I think the issue  
15 that defendants have with that is, (a) we've -- we have again  
16 gone back to the Secretary of State's office, and they do not  
17 maintain voter turnout data. So, that data, in terms of a  
18 factual matter, our client doesn't have. Whether or not in  
19 redistricting there were estimates that were made by experts  
20 using statistical methods, I think that there were, but, again,  
21 I think that that is not the proper subject of a factual RFA;  
22 and I don't think it would be fair to defendants to have to  
23 admit those -- that particular group of RFA's when there is  
24 no -- there's not even a document that's being referenced.

25           **THE COURT:** All right. Ms. Baldwin?

1           **MS. BALDWIN:** Yes, your Honor. If I may, with  
2 respect to, just very specifically, numbers 45 through 717 of  
3 the RFA's, those RFA's all concern a single document,  
4 Exhibit A, which is one of the racially polarized voting  
5 analyses documents.

6           **THE COURT:** Okay. And the defendant has said the  
7 document says what it says, and they have agreed to that.

8           **MS. BALDWIN:** It has -- well, it has charts in it,  
9 your Honor, that -- that their position is essentially that  
10 they're not going to admit, you know, putting the charts into  
11 plain, clear sentences that says: In this district, in this  
12 election, African Americans and Latino voters preferred  
13 different candidates. In terms of a straightforward  
14 presentation of the evidence, we think that it's perfectly  
15 appropriate to render those charts into clear sentences and  
16 have the defendants admit that that's, in fact, what it says so  
17 that there's --

18           **THE COURT:** Okay. Well, I don't agree with that.  
19 So, what else?

20           **MS. BALDWIN:** With respect to the other facts, 718 to  
21 743, your Honor, those are all racially polarized voting facts  
22 that, as Ms. Wolf just --

23           **THE COURT:** I'm sorry; which ones were you referring  
24 to? I'm sorry.

25           **MS. BALDWIN:** Seven eighteen through 743 --

1           **THE COURT:** Okay.

2           **MS. BALDWIN:** -- are separate facts that relate to  
3 voter turnout and voter participation and also racially  
4 polarized voting that are separate from the document itself.  
5 Those are facts that it's -- that the defendants themselves  
6 have -- have been relying on in the redistricting case. Just  
7 because there's not -- the Secretary of State doesn't maintain  
8 that, there is no reason that the defendants shouldn't be  
9 required to admit those facts. They have had an opportunity;  
10 we've served these requests for admissions months ago; and we  
11 think that those should be deemed admitted because they were  
12 improperly denied at the outset.

13           **MS. WOLF:** Your Honor, my understanding -- and,  
14 again, this is almost a level of second-degree hearsay, because  
15 this is coming from a conversation that I had with another OAG  
16 attorney who worked on this matter, but my understanding was  
17 that the State's expert in redistricting relied on Spanish  
18 surnamed turnout estimates for the limited purpose of testing  
19 an opinion on Hispanic voter turnout which was offered by the  
20 plaintiff's expert. So, for -- as a first level, my  
21 understanding, that these RFA's are broader than what was  
22 relied on in redistricting. Notwithstanding that fact, I think  
23 that these particular RFA's are calling for statistical data,  
24 which is subject to different interpretations, which is subject  
25 to different methodologies, and, frankly, Ms. Baldwin admitted

1 that the Secretary of State does not maintain hard, factual  
2 data on these matters.

3 **THE COURT:** Okay. Are these all the documents, the  
4 one through 743, I guess, or is there something else we need to  
5 address?

6 **MS. BALDWIN:** These are -- these are 718 through 743,  
7 your Honor.

8 **MS. WOLF:** Yes.

9 **THE COURT:** Okay. Court's going to deny the  
10 Government's motion, then, I guess, from one through 743 at  
11 this point.

12 What else do we need to discuss?

13 **MR. HEBERT:** Your Honor, this is Gerry Hebert for the  
14 Veasey-LULAC plaintiffs. May I raise one matter very quickly?

15 **THE COURT:** Yes.

16 **MR. HEBERT:** We have been conferring with the State  
17 of Texas lawyers, as well as Mr. D'Andrea, about unsealing  
18 portions of three expert reports that we've submitted for  
19 Drs. Lichtman, Cornish, and Herron. And we've reach agreement;  
20 the State has no objection. Mr. D'Andrea, who I understand is  
21 in the courtroom, so he can correct me if I'm wrong, he said  
22 that the privileged documents cited in our expert reports  
23 should be treated, in his eyes, as the same as the plaintiffs'  
24 exhibits that the United States and Mr. Freeman worked out in  
25 the stipulation and that, while he opposes, obviously,

1 unsealing the documents, he's willing to agree that those  
2 documents that our experts cited can't be distinguished from  
3 the ones that you've already unsealed. And, so, that  
4 stipulation -- we'd just like it on the record so we can get  
5 those three expert reports unsealed.

6 **THE COURT:** All right. Mr. D'Andrea?

7 **MR. D'ANDREA:** I agree with what Mr. Hebert said.

8 **THE COURT:** Okay. That's agreed and stipulated to,  
9 then.

10 **MR. ROSENBERG:** Your Honor, Ezra Rosenberg. One  
11 other housekeeping matter, also a matter of agreement. We, DOJ  
12 and the other plaintiffs and the State have agreed that each  
13 will -- each party will give the other side 48 hours' notice  
14 instead of 24 hours' notice of their witnesses, so we will be  
15 providing the State with the witnesses who we intend to call on  
16 Tuesday, we will provide that to them on Sunday morning, and  
17 the witnesses who we intend to call on Wednesday, we will  
18 advise them on Monday morning. We will also include the  
19 witnesses who we intend to present by video deposition. And,  
20 for the Court's convenience, we will provide those lists  
21 ex parte sometime today --

22 **THE COURT:** Okay.

23 **MR. ROSENBERG:** -- if that's okay with the Court.

24 **THE COURT:** That's fine.

25 **MR. ROSENBERG:** But we will -- I'm sorry?

1           **THE COURT:** I'm sorry. I said that's fine. I was  
2 thinking for this case it was better to do more than one day in  
3 advance, knowing that we may, you know, need to make some  
4 changes, and definitely, you know, I'd appreciate advance  
5 notice on that.

6           **MR. ROSENBERG:** Yeah; (indiscernible) prior to -- as  
7 we said in court the other day, fill in deposition  
8 designations, but since, you know, we don't know which will  
9 come in on which day, the deposition designations themselves as  
10 a whole, obviously, that universe, the State gets notice of.

11           **THE COURT:** Okay. Mr. Donnell, were you going to say  
12 something?

13           **MR. DONNELL:** I just -- what was going to be provided  
14 ex parte? I didn't understand.

15           **THE COURT:** To the Court, the -- the witnesses that  
16 are going to be called. That just gives me a little bit -- if  
17 I need to start looking at some of -- whether they're experts,  
18 or whatever it is --

19           **MR. DONNELL:** That's fine.

20           **THE COURT:** -- I have a heads up. So, you all can do  
21 that, too, the defense.

22           **MR. ROSENBERG:** And we will -- we will identify them  
23 as experts or laymen just for your Honor's convenience.

24           **THE COURT:** Okay. What else? Anything else from the  
25 plaintiffs this morning?

1           **MS. WESTFALL:** Your Honor, this is Elizabeth Westfall  
2 for the United States. I have a very small issue, which is we  
3 have trial techs and paralegals coming into the courtroom.  
4 Would it be acceptable for them to be permitted to bring in  
5 their cell phones into the -- into the courtroom?

6           **THE COURT:** Yes.

7           **MS. WESTFALL:** Thank you, your Honor.

8           **THE COURT:** Okay. What else? So, then, we're  
9 probably not going to be conferring again, and we'll just get  
10 together on Tuesday morning at 8:00 o'clock ready for openings  
11 and straight into the evidence and -- correct? And you all are  
12 still going to be conferring about exhibits, correct?

13           **MR. ROSENBERG:** Yeah, we -- we've already started  
14 that process regarding -- this is Ezra Rosenberg again. We  
15 will be continuing it throughout the weekend and hope that  
16 there will be fairly little for your Honor to deal with in  
17 terms of designations or exhibits.

18           **THE COURT:** Okay. Very good. Anything from the  
19 defense?

20           **MR. DONNELL:** No, your Honor.

21           **THE COURT:** All right. We'll see you all Tuesday.  
22 Have a good weekend.

23           **COUNSEL:** Thank you, your Honor.

24           **(Proceeding was adjourned at 8:47 a.m.)**  
25

CERTIFICATION

I certify that the foregoing is a correct transcript from the electronic sound recording of the proceedings in the above-entitled matter.

A handwritten signature in cursive script, appearing to read "Toni Hudson", is positioned above a horizontal line.

September 2, 2014

TONI HUDSON, TRANSCRIBER